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May 29, 2018

Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *UMB Bank, N.A. as Trustee v. Sanofi*, 15 Civ. 8725 (S.D.N.Y) (GBD) (RWL)

Dear Judge Daniels:

Sanofi respectfully requests leave of the Court to file a short sur-reply to Plaintiff's Reply In Support of Its Objections to Part Two of the April 12, 2018 Report and Recommendation on the Trustee's Motion for Summary Judgment Regarding its 7.6(a) Audit Right (the "Reply"). The proposed sur-reply (the "Sur-Reply") is appended hereto as Exhibit A. Sanofi seeks leave to file the Sur-Reply to respond briefly to the additional arguments advanced by Plaintiff in the Reply (which was filed without leave and, accordingly, in contravention of Fed. R. Civ. P. 72(b)).

On April 12, 2018, Magistrate Judge Lehrburger issued a Report and Recommendation (the "R&R") (ECF No. 185) on Plaintiff's partial motion for summary judgment with respect to its audit claim under Section 7.6(a) of the CVR Agreement (*i.e.*, Count VI of the Second Amended Complaint). In the R&R, Magistrate Judge Lehrburger recommended that this Court grant Plaintiff's motion, but defer entry of final judgment on Count VI. Six days later, on April 18, 2018, Plaintiff wrote to Magistrate Judge Lehrburger and requested (in the alternative): (i) "reconsideration and revision" of the R&R; or (ii) entry of a discovery order directing Sanofi to submit to an on-site inspection of records that "may be reasonably necessary to verify the accuracy of the statements set forth in the Product Sales Statements and the figures underlying the calculations set forth therein." On April 19, 2018, Magistrate Judge Lehrburger temporarily withdrew the R&R to consider Plaintiff's arguments. (ECF No. 187.) On April 23, 2018, Sanofi responded to Plaintiff's letter (ECF No. 188), and, on April 24, 2018, Magistrate Judge Lehrburger denied Plaintiff's request and reinstated the R&R without revision. (ECF No. 189.)

Under Fed. R. Civ. P. 72(b), the parties had 14 days from the entry of Magistrate Judge Lehrburger's April 24 Order to file written objections to the R&R. On May 8, 2018, Plaintiff filed its objection with this Court and, on May 22, 2018, Sanofi filed its response. Although Fed. R. Civ. P. 72(b) does not provide

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for the submission of a reply,¹ on May 23, 2018, Plaintiff nevertheless filed one (and without first applying to this Court for leave). Accordingly, the Reply should be stricken or, in the alternative, Sanofi should be granted leave to respond briefly to it (via the appended Sur-Reply).

* * *

For the foregoing reasons, Sanofi respectfully requests that the Court strike the Reply or, in the alternative, grant Sanofi leave to file the Sur-Reply.

Respectfully submitted,

/s/ John A. Neuwirth
John A. Neuwirth

cc: Counsel of Record

¹ Rule 72(b) provides: “Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party’s objections within 14 days after being served with a copy.” Fed. R. Civ. P. 72(b).